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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEW JERSEY**

10 Frederick J. TODD,
11 Plaintiff,
12 vs.
13 Mark FINKELSTEIN; LANCASTER
14 PROPERTY HOLDINGS, LLC; DOES 1-10,
15 Defendant.

16) Case No. _____
17)
18) **COMPLAINT FOR**
19)
20) 1. BREACH OF CONTRACT;
21) 2. BREACH OF FIDUCIARY DUTY;
22) 3. FRAUD;
23) 4. CONSTRUCTIVE TRUST;
24) 5. ACCOUNTING;
25) 6. RECEIVER;
26) 7. DECLARATORY RELIEF;
27)
28)

DEMAND FOR JURY TRIAL

Frederick J. Todd ("Plaintiff"), on information and belief, hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking damages and other relief for breach of contract, breach of fiduciary duty, and fraud.

PARTIES

2. Plaintiff Frederick J. Todd is a United States citizen and resident of New Jersey. Plaintiff is an ordained rabbi.

3. Defendant Mark Finkelstein is a United States citizen and resident of New Jersey.

4. Plaintiff is informed, believes, and thereupon alleges that Defendant Lancaster Property Holdings, LLC (“LPH”) is a limited liability company [with Defendant Finkelstein as the sole owner]. Defendant LPC is formed under the laws of the state of Pennsylvania with its principal place of business at 4808 Tacony St., Philadelphia, Penn, 19137.

5. Plaintiff is informed, believes, and thereupon alleges that there are other Defendants holding proceeds derived from or benefiting from the use of Plaintiff's property. The true names and capacities of Defendants named herein as DOES 1 through 10, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names. Each of the Defendants designated herein as DOE is negligently or otherwise legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to Plaintiff, as herein alleged. Plaintiff will amend this Complaint to show true names and capacities when they have been ascertained.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendants Finkelstein and LPC because Defendants have purposely availed themselves of this forum. The Agreement was formed under the laws of New Jersey and established the chief executive office and principal place of business of the Partnership at 360 Valley Avenue, Apartment 23, Hammonton NJ 08037. Additionally, the Agreement provides that New Jersey law governs. Defendant LPC is wholly owned by

1 Finkelstein, who signed and made promises in the Agreement with respect to LPC's rights and
2 obligations in relation to Plaintiff, and therefore LPC also availed itself of the New Jersey forum.

3 7. This Court has subject matter jurisdiction over Defendants pursuant to 28 U.S.C. § 1332.
4 Plaintiff, a New Jersey resident, is diverse to Defendant LPC. Plaintiff seeks compensatory and
5 punitive damages in excess of \$310,000.

6 8. Venue is proper within this Court because the Partnership is established in New Jersey
7 under New Jersey law, and the Agreement explicitly provides for venue in New Jersey.
8 Additionally, the business of the Partnership was conducted there and the money paid by
9 Plaintiff to Defendants was used in New Jersey.

10 **FACTS COMMON TO ALL COUNTS**

11 9. Defendant LPC, an entity wholly owned by Defendant Finkelstein, was the owner of real
12 property located at 5351 Lancaster Avenue, Philadelphia, PA 19131 ("Lancaster Property"). The
13 tenant of the Lancaster Property was a retail furniture store named Furniture Sir-Plus ("Lancaster
14 Store").

15 10. In autumn 2008, Defendant Finkelstein approached Plaintiff, a rabbi and well-known
16 figure in the New Jersey Jewish community, seeking financial assistance. Defendants wished to
17 purchase additional property, located at 4808 to 4828 Talcony Street, Philadelphia, PA 19151
18 ("Talcony Property"), and open a second Furniture Sir-Plus store ("Talcony Store"). In fact,
19 Defendants had already begun construction of the Talcony Store, but had run out of funds and all
20 further construction work had been halted as a result, and thus Defendants were desperately
21 searching for an alternative source of funding.

22 11. On November 2, 2008, Plaintiff and Defendant Finkelstein signed a General Partnership
23 Agreement ("Agreement") establishing the Todd-Finkelstein Partnership ("Partnership"),
24 organized under the laws of New Jersey. A true and correct copy of the Agreement is attached
25 hereto as Exhibit A.

26 12. Plaintiff and Defendant each had a 50% interest in the Partnership. See *id.* at
27
28

1 13. The business of the Partnership was to purchase the Talcony Property for the purpose of
2 investment. The Partnership was also to take ownership of the Talcony Store. Pursuant to the
3 Agreement, Plaintiff was to seek financing for the purchase of the Talcony Property.

4 14. The Partnership was to be funded by a capital contribution of \$260,000 from Plaintiff.
5 Defendants Finkelstein and LPH contributed assets already invested in not only the Talcony
6 Property and Store, but also the Lancaster Property and Store. In addition, Defendant Finkelstein
7 agreed to contribute \$270,000 to fund the Partnership, payable as needed but in any event within
8 two years, or by November 2, 2010.

9 15. Plaintiff duly contributed \$250,000 on [date] toward the purchase of the Talcony
10 Property, and in addition Plaintiff paid \$60,000 to a mortgage broker to arrange the remainder of
11 the financing.

12 16. Defendants Finkelstein and LPC immediately used Plaintiff's funds to complete
13 construction of the Talcony Store and purchase inventory.

14 17. However, when Plaintiff asked for an accounting, Defendant refused to provide Plaintiff
15 with any information as to how the money had been allocated. Plaintiff has never seen a list of
16 suppliers, has never received copies of supplier invoices, and has not been provided with bank
17 statements for the Talcony Property and Store accounts. This is a direct breach of the Agreement,
18 which provides that "Each Partner agrees: (a) to account to the Partnership and hold as trustee for
19 the Partnership any property, profit or benefit derived by such Partner in the conduct and
20 winding up of the Partnership business or derived from a use by the Partner of partnership
21 property. . . ." See Ex. A, ¶ 9.2.

22 18. Defendants also have not given Plaintiff his Partnership share of the profits from the
23 Talcony Store, to which he is entitled under the Agreement. The refusal to share profits from the
24 Talcony Store constitutes an additional breach of contract.

25 19. Further, Defendants have consistently refused to provide an accounting to Plaintiff, and
26 as such Defendants' conduct constitutes a breach of his fiduciary duty toward Plaintiff as a
27 trustee of Partnership property, as provided in the Agreement and in the New Jersey law of
28 partnerships New Jersey Statutes 42:1A-24.

1 20. Finally, Plaintiff's willingness to enter into the Partnership and his agreement regarding
2 the amount of his contribution to the Partnership was based on and induced by Defendants'
3 representations to Plaintiff. Since signing the Agreement in 2008, Plaintiff has discovered that
4 Defendants made material misrepresentations to him regarding the fair market valuation of the
5 Talcony Property, the rental value of the Talcony Store, and the quality and reliability of the
6 Talcony Store tenants. Defendants' misrepresentations have resulted in Plaintiff's inability to
7 secure complete financing for the Talcony Property and constitute fraud on the part of
8 Defendants, who knew or should have known of the true value of the Talcony Store and
9 Property.

10 21. As a result of Defendants' possession and use of the \$310,000 paid by Plaintiff and
11 breach of fiduciary duty, Defendants have been unjustly enriched.

12 22. Plaintiff has already attempted to resolve this dispute in the [Besdin Melhon Lhorya]
13 Rabbinic Court in [Monsey, New Jersey], as required under the Agreement. According to Jewish
14 law, it is forbidden to bring a dispute to secular court without the permission of a Rabbinic court.
15 Although Defendants received proper notice and assured Plaintiff they would appear at the
16 Rabbinic court, they did not and therefore Plaintiff has received permission to file this complaint.

17 23. Accordingly, Plaintiff now brings suit for breach of contract, breach of fiduciary duty,
18 and fraud, and seeks compensatory and punitive damages in amounts within the jurisdictional
19 limits of this Court, as well as an accounting, receivership, constructive trust, and declaratory
20 relief stating each party's obligations.

21 **FIRST CAUSE OF ACTION**

22 **BREACH OF CONTRACT**

23 24. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
24 and every allegation set forth in paragraphs 1 through 23 above.

25 25. Under the Agreement, Plaintiff was to make a capital contribution to the Partnership of
26 \$260,000, and in addition seek financing for the Talcony Property. In return, Plaintiff would
27 receive a 50% ownership interest in the Talcony Property and Talcony Store through the
28 Partnership.

1 26. Plaintiff duly paid \$250,000 directly to Defendants, and in addition paid \$60,000 to a
2 mortgage broker to secure complete financing for the Talcony Property. Defendants have used
3 Plaintiff's funds to complete construction of the Talcony Store and purchase inventory in order
4 to open the business and begin selling.

5 27. However, Defendants have refused to provide any accounting whatsoever to Plaintiff as
6 to how the money was used, including supplier and bank account information.

7 28. Defendants have also refused to turn over Plaintiff's 50% share of the profits from the
8 Talcony Store, as required under the Agreement.

9 29. Accordingly, Defendants are in breach of the Agreement. Plaintiff seeks specific
10 performance as well as compensatory damages in an amount to be proved at trial.

11 **SECOND CAUSE OF ACTION**

12 **BREACH OF FIDUCIARY DUTY**

13 30. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
14 and every allegation set forth in paragraphs 1 through 29 above.

15 31. As alleged herein, Defendants have received the benefits of Plaintiff's property and assets
16 as set forth above.

17 32. As a partner to Plaintiff, Defendant Finkelstein owed a fiduciary duty of care to Plaintiff
18 as a trustee of Partnership property and assets to provide an accounting and act with good faith in
19 the best interests in the Partnership. By failing to do so, Defendant Finkelstein – and through
20 him, Defendant LPC – manifestly breached this duty and caused substantial harm to Plaintiff.

21 33. Accordingly, Defendants have breached their fiduciary duties to Plaintiff and have been
22 unjustly enriched, and it would be inequitable for Defendants to be allowed to retain Plaintiff's
23 assets and property without being ordered to disgorge the profits from the use of those assets and
24 property and be subject to punitive damages as a result.

25 **THIRD CAUSE OF ACTION**

26 **FRAUD**

27 34. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
28 and every allegation set forth in paragraphs 1 through 33 above.

1 35. Defendants intentionally and negligently made misrepresentations of material fact by
2 negotiating and entering into the Agreement without intending to fulfill their obligations under
3 the Agreement. Defendants also intentionally and negligently misrepresented the value of the
4 Talcony Property, the value of rent from the Talcony Store, and the quality of the tenants which
5 Defendant knew would be running the Store. Plaintiff reasonably relied on Defendants'
6 misrepresentations, which induced him to sign the Agreement and resulted in substantial harm to
7 Plaintiff as he has performed his obligation to provide funding in the amount of \$310,000 but has
8 not received an accounting or his share of profits in return.

9 36. Such misrepresentations also constitute false promises to Plaintiff that Defendants would
10 perform their obligations without intending to do so.

11 37. As a direct result, Defendants have been unjustly enriched at Plaintiff's expense and have
12 caused Plaintiff to incur damages and injuries to his rights and property resulting from
13 Defendants' wrongful conversion and use of Plaintiffs' property. Accordingly, Plaintiff seeks all
14 legal and equitable remedies to compensate him for Defendants' fraud.

15 **FOURTH CAUSE OF ACTION**

16 **CONSTRUCTIVE TRUST**

17 38. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
18 and every allegation set forth in paragraphs 1 through 37 above.

19 39. Defendants have taken title to and/or come into possession of various assets which
20 rightfully belong to Plaintiff. As a result of Defendants' acquisition, control and use of
21 Plaintiff's property, without Plaintiff's consent, Defendants have been unjustly enriched as
22 alleged herein.

23 40. As a result of Defendants' unjust enrichment arising from their use and possession of
24 Plaintiff's property described herein, a constructive trust exists wherein Defendants are the
25 constructive trustees of all property and assets belonging to Plaintiff and Defendants are
26 therefore under a duty to account for and convey said property to Plaintiff as the beneficiary of
27 the constructive trust. Accordingly, a constructive trust exists as to the \$310,000 which Plaintiff
28 reasonably and in good faith conveyed to Defendants pursuant to the Agreement, and as to

1 Plaintiff's rightful ownership and share in the Talcony Property and Talcony Store through the
2 Partnership.

3 **FIFTH CAUSE OF ACTION**

4 **ACCOUNTING**

5 41. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
6 and every allegation set forth in paragraphs 1 through 40 above.

7 42. Defendants have taken title to and/or come into possession of various assets which
8 rightfully belong to Plaintiff. As a result of Defendants' acquisition, control and use of
9 Plaintiff's property, without Plaintiff's consent, Defendants have been unjustly enriched as
10 alleged herein.

11 43. Plaintiff's property given to or spent on behalf of Defendants totals \$310,000. In addition,
12 Plaintiff is entitled to his rightful Partnership share of the profits from the Talcony Store. Due to
13 the nature of Defendants' and the Talcony Store's accounts and businesses, which are known to
14 Defendants and unknown to Plaintiff, and to avoid manifest injustice by preventing Plaintiff
15 from recouping his property unlawfully converted by Defendants, Plaintiff is entitled to an
16 accounting to determine the amount of restitution and/or damages owed to Plaintiff by
17 Defendants.

18 44. The exact nature and extent of the assets and property of Plaintiff and the amounts which
19 are due to Plaintiff cannot be ascertained without an accounting of all business records, books,
20 and accounts regarding the Talcony Property and Store, including the profits obtained by
21 Defendants from their use and conversion of Plaintiff's property.

22 **SIXTH CAUSE OF ACTION**

23 **RECEIVER**

24 45. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
25 and every allegation set forth in paragraphs 1 through 45 above.

26 46. Due to Defendants' illegal and fraudulent conduct, Plaintiff is entitled to the appointment
27 of a receiver to take custodial responsibility of all of the Partnership assets, including the
28 \$310,000 already invested by Plaintiff and the Talcony Property and Store. Such receiver is

1 necessary because the Talcony Store is a cash-based business and therefore a fiscal agent is
2 necessary to ensure that all of Plaintiff's tangible and intangible assets and rights are protected,
3 including the actual profits and value of the Talcony Store.

4 **SEVENTH CAUSE OF ACTION**

5 **DECLARATORY RELIEF**

6 47. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each
7 and every allegation set forth in paragraphs 1 through 46 above.

8 48. There is a real dispute between the parties as to whether Defendants are unjustly profiting
9 from property belonging to Plaintiff and as to the amount of the unjust enrichment and the nature
10 and value of the assets and property belonging to Plaintiff. Consequently, Plaintiff seeks a
11 judicial declaration that he is entitled to the \$310,000 he already invested pursuant to the
12 Agreement and to his share of the Partnership assets, the proceeds of which are presently in
13 Defendants' use, possession, and/or control, and that Plaintiff is entitled to restitution based on
14 Defendants' unjust enrichment and profits arising from Defendants' use and possession of
15 Plaintiffs' property.

16 **DEMAND FOR JUDGMENT**

17 Wherefore, Plaintiff prays for judgment and relief against Defendants as follows:

18 1. For compensatory and punitive damages in an amount within the jurisdictional limits of
19 this Court according to proof;

20 2. For a current fair market valuation of Plaintiff's share of the Partnership assets;

21 3. For an accounting of profits, as ordered by this Court;

22 4. For loss of profits, according to proof;

23 5. For restitution based on Defendants' unjust enrichment, according to proof;

24 6. For the appointment of a receiver;

25 7. For the imposition of a constructive trust;

26 8. For declaratory relief as requested herein;

27 9. For costs of suit;

28 10. For costs expended by Plaintiff in pursuit of his property pursuant to Fed. R. Civ. P 54(c);

- 1 11. For injunctive relief to prevent Defendants' continuing unjust enrichment; and
- 2 12. For such other and further relief as the Court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a jury on all issues to which he is entitled to have tried by jury.

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6 Dated: November 10, 2010

7 By: 
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9 Dominick M. Manco, Esq.
10 Attorneys for Plaintiff

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EXHIBIT A